



Disability Insurance Program Rules & Regulations Proposed Revisions Effective July 1, 2016

(New Language in Purple)

A. Section 2.0 - Definitions

We are recommending the addition of the following definitions to Section 2.0 of the DIP Rules & Regulations to clarify terms and/or language used within the document and program:

“Elimination Period” is the period of time you must be disabled before disability benefits commence. The elimination period in the Short Term Disability (STD) program is 30 calendar days. The elimination period in the Long Term Disability (LTD) program is the last to be satisfied of the following:

- 1) The first 182 consecutive calendar day(s) of any one period of disability; or
- 2) The exhaustion of the STD benefit period.

“Personal Injury Protection (PIP)” is insurance coverage that is statutorily mandated for Delaware registered vehicles. 21 Del. C. §2118 requires minimum PIP limits of \$15,000 per person; \$30,000 per accident for reasonable and necessary medical expenses, net amount of loss earnings, funeral expenses, and substitute services incurred within 2 years of an automobile accident. PIP benefits for vehicles registered to the State of Delaware for the needs of state government employees are administered by the ICO. PIP benefits for personally owned and/or rented vehicles are administered by the employee’s personal automobile carrier.”

“Insurance Coverage Office (ICO)” is the state office responsible for providing quality support for the state government's insurance needs. The office is responsible for managing the insurance program for state vehicles, buildings and property and workers’ compensation, as well as reviewing state facilities for safety issues and providing safety programs to state employees.

“Salary Supplement” pursuant to 29 Del. C. §5933 outlines that whenever an officer as defined in 29 Del.C. §5812

(n)(1),(<http://delcode.delaware.gov/title29/c058/sc02/index.shtml>) or employee of the State qualifies for workers' compensation disability benefits, the officer or employee is



not charged sick or annual leave and shall receive from the State the difference, if any, between the total of: (1) The amount of such compensation, (2) any disability benefits received under the Federal Social Security Act, and (3) any other employer supported disability program, and the amount of wages to which the officer or employee is entitled on the date such compensation begins. No more than 1 period of supplemental pay shall be made under this subsection for any work injury, including any recurrence or aggravation of that work injury. Temporary disability payments that are paid through the Workers' Compensation program and administered by the Insurance Coverage Office (ICO) are unrelated to disability benefits paid under the DIP.

“Your Occupation” means your occupation as it is recognized in the general workplace. It does not mean the specific job you are performing or at a specific location.

“Workers’ Compensation” (WC) is a system, established under Chapter 23 of Title 19 of the Delaware Code, which provides compensation to workers who are injured or who contract an occupational disease while working. The benefits can include medical care, temporary disability payments and compensation for a resulting permanent impairment. In the event of the death of an injured worker, benefits are payable to the family of the worker. Benefits may be paid voluntarily or it may be necessary to petition the Office of Workers' Compensation for relief. Temporary disability payments that are paid through the Workers' Compensation program and administered by the Insurance Coverage Office (ICO) are unrelated to disability benefits paid under the DIP.

For added clarity, we are recommend revising the definition of “Pre-Disability Base Pay” in the DIP Rules & Regulations to distinguish it from the definition of wages in the Workers’ Compensation and Personal Injury Protection programs sponsored by the State of Delaware and administered by the Insurance Coverage Office.

“Pre-Disability Base Pay” aka **“Creditable Compensation”** shall mean the employee’s usual rate of pay ~~compensation~~ paid to the employee on the last day of employment before the employee developed a disability- including hazardous duty pay, if applicable. Pre-disability earnings do not include commissions, bonuses, shift differential pay, overtime pay or any other fringe benefit or extra compensation. For purposes of the DIP, Pre-Disability Base Pay is the employee’s usual rate of pay prior to each date of disability.

B. Section 4.0 – Short Term Disability (STD) Elimination Period

For ease of administration, we recommend adding language to Rule 4.1 of the Dip Rules & Regulations to incorporate Merit Rule 5.3.8, so merit and merit comparable organizations do not charge sick leave to employees injured at work on the day of the injury. The revised rule will read:



4.1 Pursuant to 29 Del. C. §5253(a), Participating employees shall be eligible to utilize earned sick leave for absences due to accident, illness, or injury for periods before disability benefits commence under this chapter, such that the participating employee receives 100% of creditable compensation for such periods, not to exceed the employee's sick leave balance. Employees may also utilize earned annual leave, compensatory time or donated leave for absences due to accident, illness, pregnancy or injury for periods before disability benefits commence such that the employee receives 100% of creditable compensation for such periods, not to exceed the employee's sick leave balance. Merit employees who are injured on the job and approved for workers' compensation (WC) should not be charged with sick leave for any portion of the day of the injury, pursuant to Merit Rule 5.3.8. Non-merit employees must comply with the rules that apply to your employing organization. The date of the injury is the first day of the STD calendar day elimination period.

C. Section 5.0 – Claim Filing Requirements

The title of this category is vague. So readers know that this section applies to the STD program and not the LTD program, we recommend the inclusion of the acronym “STD” in the subcategory title as shown below:

5.0 STD Claim Filing Requirements

We recommend adding language to Rule 5.1 to clarify the period of time when an employee has not returned to work after the STD approved through date and does not meet eligibility criteria noted in Section 9.0 of the DIP Rules & Regulations. The revised rule will read:

- 5.1 Pursuant to 29 Del. C. §5253(b)(7), once an employee exhausts their elimination period, the employee will be deemed to have applied for benefits under this section and shall not be eligible to utilize paid leave in lieu of application for STD. Employees not meeting the requirements noted in Section 9.0, will be deemed to have applied for benefits under this section and shall not be eligible to utilize paid leave in lieu of application for an extension of STD benefits.

We recommend adding language to Rule 5.2 requiring employing organizations to notify The Hartford of a hazardous duty employee's entitled to the 12 month versus 3 month salary supplement for claim adjudication purposes. The revised rule will read:

- 5.2 All employees enrolled in DIP who expect to be out of work for the length of the calendar day elimination period are required to file an STD claim in a complete and timely manner, even if the employee applied for and/or is receiving Workers' Compensation (WC) benefits or Other Income Benefits defined in the STD benefits booklet per Delaware Code. Hazardous duty employees injured in the



line of duty, who are employed by the Department of Corrections (or its successor agency), the Delaware Psychiatric Center (or its successor agency) who are assigned to programs for the criminally insane, the Department of Services for Children, Youth and Their Families who are assigned to work in the Division of Youth Rehabilitative Services facilities, State law-enforcement officers in the performance of their duties including State employees serving in response to imminent danger of hazardous waste material, including but not limited to the SERT Team are required to file an STD claim in a complete and timely manner if they expect to be out of work for the length of the calendar day elimination period. Employing organizations are required to provide the DIP insurance carrier and/or Administrator with the names of hazardous duty employees who are injured while performing a hazardous duty who are entitled to be paid the twelve month salary supplement pursuant to 29 Del.C. §5933 (c).

D. Section 6 - Coverage

The title of this category is vague. So readers know that this section applies to the STD program and not the LTD program, we recommend the inclusion of the acronym “STD” in the subcategory title as shown below:

6.0 STD Coverage

We recommend adding language to Rule 6.2 requiring employing organizations to notify The Hartford of a hazardous duty employee’s entitled to the 12 month versus 3 month salary supplement for claim adjudication purposes. The revised rule will read:

- 6.2 The employing organization is responsible for providing the DIP insurance carrier and/or Administrator, with the last day worked and any partial day(s) worked information, if applicable, for each claimant. Organizations that employ hazardous duty employees who are entitled to the twelve month salary supplement as a result of being injured while performing a hazardous duty must notify the DIP insurance carrier and/or Administrator of the employees entitlement to the twelve month (versus 3 month) salary supplement. Organizations that employ Less Than Twelve Month Educational Employees who have filed an STD claim with the DIP insurance carrier and/or Administrator, must also provide the DIP insurance carrier and/or Administrator with confirmation of whether the employee is a “Less Than Twelve Month Educational Employee”, the number of contractual days in the employee’s school year and a list of all non-contractual days for the twenty-six week period starting with the claimants date of disability. This information must be provided by the employing organization to the DIP insurance carrier and/or Administrator within 48 hours of the date when the employee files their STD claim or from the date the employing organization receives formal notification of an employee’s STD claim filing from the DIP insurance carrier and/or Administrator.

E. Section 7.0 - Less Than Twelve Month Educational Employees Only (Institutions of Higher Education, School Districts, Charter Schools, Dept. of Education)



The title of this category is vague. So readers know that this section applies to the STD program and not the LTD program, we recommend the inclusion of the acronym “STD” in the subcategory title as shown below:

7.0 STD - Less Than Twelve Month Educational Employees Only (Institutions of Higher Education, School Districts, Charter Schools, Dept. of Education)

F. Section 8.0 – Benefit Payment

The title of this category is vague. So readers know that this section applies to the STD program and not the LTD program, we recommend the inclusion of the acronym “STD” in the subcategory title as shown below:

8.0 STD Benefit Payment

As STD benefits are classified as income wage replacement or wages by the IRS, we recommend adding the word “wage” in Rule 8.1 to address this. The revised will read:

8.1 STD benefit **wage** payments are paid by the employing organization to employees whose STD claims have been approved **or extended**.

As the Workers’ Compensation salary supplement defined in 29 Del.C. §5933 (c) is an offset to disability benefits, we recommend the inclusion of clarifying language Rule 8.6.6 to specifically address this. The revised rule will read:

8.6.6 Any temporary or permanent disability benefits under a Workers’ Compensation law, occupational law, or similar law, **including the Salary Supplement;**

Revise language in Rule 8.6.8. As Workers’ Compensation (WC) claims for lost wages (indemnity) and permanency/scarring-disfigurement are resolved separately with attorney fees paid from proceeds of the permanency/scarring-disfigurement claim rather than wage (indemnity) claim, we are recommending the removal of “minus associated costs” language in Rule 8.6.8. While the “minus associated costs” provision may make sense in the abstract, it is not necessary and can be inappropriately relied upon by employees to shift a portion of their attorney fees for the permanency/scarring-disfigurement WC claim to the state.

8.6.8 The portion of a settlement or judgment, ~~minus associated costs~~, of a lawsuit that represents or compensates for the employee’s loss of earnings for the same disability.”

G. Section 9.0 – Leaves

For added clarity, we recommend incorporating language into Section 9.1.2 to address how leave accruals are to be paid to merit and merit comparable employees.



9.1.2 Pursuant to 29 Del. C. §5253(b)(4), an employee may utilize annual, sick, compensatory, or donated leave to supplement STD benefits to equal 100% of pre-disability base pay for a maximum benefit period of 182 calendar days. The employee can chose from the following three options:

9.1.2.1 The employee may choose to use their monthly leave accrual consecutively starting on the first workday of the month to supplement the STD benefit with available leave until the leave is exhausted. The leave must be utilized consecutively rather than on specific dates of the employee's choosing in the month; or

9.1.2.2 The employee may choose to retain their leave accrual and save it for payout at the time the employee becomes a Long Term Disability (LTD) beneficiary or retires on a service pension; or

9.1.2.3 The employee may choose to save their leave accrual for use when they return to work from STD leave.

Recommend revisions to language in Rule 9.1.3 to correct a typo in the name of the FMLA law and to add clarity to the rule. The revised rule will read:

9.1.3 Employees applying for STD benefits must also apply for the Family and Medical Leave Act (FMLA). While on FMLA, employees may retain one week of sick and one week of annual leave. Accruals that exceed the allowable one week of sick leave and one week of annual leave must be used as earned.

For ease of administration, we recommending the inclusion of Merit Rule 5.3.8 and into the DIP Rules & Regulations, as shown below:

9.1.12 Pursuant to Merit Rule 5.3.8, employees who are injured on the job and approved for Workers' Compensation will not be charged with sick leave for any portion of the day of injury.

To address particular employees in a no pay status, we recommend adding the following language to the DIP Rules & Regulations:

9.1.13 If an employee is in a no pay status during the STD elimination period, leave accrual stops. The employee should receive leave accrual prorated for the portion of the month they last worked and a prorated amount of leave for the portion of the month in which the employee receives STD benefits. Please see DIP FAQ's, Section 6 for more information.

9.1.14 Merit employees accrue sick and annual leave equivalent to the total combined benefit and wage (STD, sick or annual leave, WC, donated leave and PIP, not to



exceed 100% of pre-disability earnings) paid to the employee. Please see DIP FAQ's, Section 6 for specific examples.

H. Section 10 - Termination of Benefits

The title of this category is vague. So readers know that this section applies to the STD program and not the LTD program, we recommend the inclusion of the acronym “STD” in the subcategory title as shown below:

10.0 Termination of STD Benefits

I. Section 11.0 – Appeals – STD Claim Determinations

For added clarity for employees filing Level I STD appeals with The Hartford, we recommend including an address in Rule 11.2 as shown below:

11.2 Pursuant to 29 Del.C. §5258, within 90 days of the postmark date of the carrier’s written notice of its determination regarding STD benefits, a claimant may appeal any determination of disability benefits by filing a written petition setting forth with particularity the grounds for appeal with the DIP insurance carrier and/or Administrator. The DIP insurance carrier and/or Administrator has the authority to reverse all or any part of its initial STD benefit determination and shall notify the claimant, the employing organization and the Statewide Benefits Office in writing by certified mail, return receipt requested within 10 days of the determination. The claimant’s written appeal should be addressed and mailed to:

Benefit Management Services
Atlanta Disability Claim Office
RE: DISABILITY APPEAL
The Hartford
P.O. Box 14301
Lexington, KY 40512-4301
Tel: (800) 549-6514/ Fax: (866) 411-5613

J. Section 14.0 – Elimination Period

The title of this category is vague. So readers know that this section applies to the LTD program and not the STD program, we recommend the inclusion of the acronym “LTD” in the subcategory title as shown below:

14.0 LTD Elimination Period

K. Section 15.0 – Coverage

The title of this category is vague. So readers know that this section applies to the LTD program and not the STD program, we recommend the inclusion of the acronym “LTD” in the subcategory title as shown below:



15.0 LTD Coverage

L. Section 16.0 – Benefit Payment

The title of this category is vague. So readers know that this section applies to the LTD program and not the STD program, we recommend the inclusion of the acronym “LTD” in the subcategory title as shown below:

16.0 LTD Benefit Payment

Revise language in Rule 16.5.7.3. As Workers’ Compensation (WC) claims for lost wages (indemnity) and permanency/scarring-disfigurement are resolved separately with attorney fees paid from proceeds of the permanency/scarring-disfigurement claim rather than wage (indemnity) claim, we are recommending the removal of “minus associated costs” language in Rule 16.5.7.3. While the “minus associated costs” provision may make sense in the abstract, it is not necessary and can be inappropriately relied upon by employees to shift a portion of their attorney fees for the permanency/scarring-disfigurement WC claim to the state.

16.5.7.3 portion of a settlement or judgment, ~~minus associated costs,~~ of a lawsuit that represents or compensates for the claimant’s loss of earnings

M. Section 17.0 – Termination of Benefits

The title of this category is vague. So readers know that this section applies to the LTD program and not the STD program, we recommend the inclusion of the acronym “LTD” in the subcategory title as shown below:

17.0 LTD Termination of Benefits

N. Section 19.0 – Other Benefits During Disability

For consistency within the document, we have bolded the category title, as shown below.

19.0 Other Benefits During Disability

We recommend the inclusion of additional language in Rule 19.2.3 to address LTD beneficiaries who are working in benefit eligible active position and whose health care coverage is administered by the active agency/district rather than the Office of Pensions. The proposed new rule is shown below.

19.2.3 LTD claimants receiving benefits under 29 Del.C. §5253(c) will be treated as “eligible pensioners” and are eligible for enrollment in the Group Health Plan with State Share contributions, as applicable. **LTD beneficiaries, who have returned to work as provided in DIP Rule 22.0 prior to the exhaustion of the STD**



benefit period or who have been rehired into a benefit eligible active position, will be treated as “regular officers and employees” as provided by 29 Del. C. §5202 and are to receive State Share contributions by their employing organization. LTD beneficiaries are subject to the Group Health Insurance Plan Eligibility and Enrollment Rules. LTD beneficiaries who are not actively working in a benefit eligible position will have their health care benefits administered by the Office of Pensions.

O. Section 21.0 – Long Term Disability (RTW)

We recommend the addition of a rule addressing FLMA as it relates to employees returning to active employment.

21.10 Employees returning to active state employment from LTD are eligible for FMLA upon meeting the standard FMLA eligibility requirement of:

- 21.10.1 12 months aggregate employment;
- 21.10.2 Have worked 1,250 hours in the 12 months immediately preceding the absence;
- 21.10.3 Has not exhausted their 12 week entitlement within the most recent rolling 12 month period.

P. Section 22.0 - Working while transitioning to LTD or after the exhaustion of the STD benefit period

We recommend the inclusion of a new section to the DIP Rules & Regulations to mirror procedure DIP – 010 where employees will not be terminated when working on a temporary reduced, alternate, light duty and/or part-time basis when transitioning from STD to LTD or after the exhaustion of the STD benefit period. The new rules are shown below:

22.1 Employees working on a temporary reduced, alternate, light duty and/or part-time basis upon the exhaustion of the maximum STD benefit period should be permitted to continue working while transitioning to LTD. All employing organizations are responsible for engaging in the ADA interactive process (<http://hrm.omb.delaware.gov/policies/index.shtml>) with their employees when appropriate.

22.2 Employees who are working on a temporary reduced, alternate, light duty and/or part-time basis while transitioning to LTD or upon the exhaustion of the STD benefit period will:

- 22.2.1 Provide written notification to their HR Department indicating their intent to work while transitioning to LTD or upon the exhaustion of the STD benefit period.
- 22.2.2 Be paid for the hours worked in their regular paycheck.
- 22.2.3 Maintain current benefits with the employing organization.



- 22.2.4 For Merit employees, accrue annual and sick leave on a pro-rated basis. Non-merit employees must comply with the rules that apply to your employing organization.
- 22.2.5 Receive holiday pay in accordance with the employing organizations rules.
- 22.2.6 If approved for LTD, the employee will receive the LTD benefit once the DIP insurance carrier and/or Administrator has been provided verification for all income received for the month in which the employee has worked.

